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U.S. Citizenship
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Services

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FILE: EAC 03 164 50673 Office: VERMONT SERVICE CENTER Date: **AUG 30 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or comparable evidence under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences as a psychiatrist. The record indicates that, at the time of filing, the petitioner was employed as an attending forensic psychiatrist at Kings County Hospital Center in Brooklyn, New York and as an Assistant Clinical Professor of Psychiatry at the State University of New York (SUNY) Downstate Medical Center. The petitioner submitted supporting documents including his curriculum vitae, academic credentials, medical certifications and licenses,

membership in three psychiatric associations, a physician's recognition award from the American Medical Association (AMA), and 14 support letters from 13 psychiatric professionals with whom he has worked. The director determined that the record did not evidence the requisite sustained acclaim. On appeal, the petitioner submits a brief, a copy of the incorporation certificate of his new company and an additional letter of recommendation. The petitioner's claims and the additional evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed.

We first address the petitioner's claim that the legacy Immigration and Naturalization Service (INS) created a legal precedent by approving the petitioner's O-1 nonimmigrant visa petition under section 101(a)(O)(i) of the Act, 8 U.S.C. § 1101(a)(O)(i). Although similar, the statutory and regulatory provisions for an O-1 nonimmigrant visa petition and an employment-based immigrant petition for an alien with extraordinary ability in the sciences are not identical. The petitioner was previously granted O-1 nonimmigrant status under section 101(a)(O)(i) of the Act, 8 U.S.C. § 1101(a)(O)(i), and now seeks entry into the United States as an employment-based immigrant under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). The grant of the former nonimmigrant status does not mandate the approval of this petition. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology Intl.*, 19 I&N Dec. 593, 597 (Comm. 1988). We address the petitioner's remaining claims and the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The record contains a letter dated May 10, 1999 from ██████████ Associate Professor and Director of Residency Training and Education for the Department of Psychiatry at the Mount Sinai School of Medicine in New York City. ██████████ states, "Upon completion of his residency training, in June 1997, [the petitioner] was honored with the ██████████ M.D. Resident-of-the-Year Memorial Award in recognition of his outstanding performance throughout his residency training and education." On appeal, the petitioner maintains that this award was presented to him "as the most outstanding graduating resident of his year at one of the most prestigious faculties in the United States, with international acclaim, based on stringent faculty-wide peer review and election process." The record contains no evidence to corroborate this claim. The petitioner submitted no documentation of the "stringent faculty-wide peer review and election process" that resulted in his award. Moreover, the award is granted to graduating medical residents by Mount Sinai School of Medicine and thus constitutes an internal academic honor, not a prize or award granted to established medical doctors. Similarly unsupported by the record is the petitioner's implication that Mount Sinai's purported prestige and international acclaim can be attributed to his Resident-of-the-Year award. The petitioner submitted no evidence that his award is nationally or internationally recognized in his field. The national or international acclaim of an institution is not prima facie evidence that all awards or prizes granted by that institution are also nationally or internationally recognized.

The petitioner also claims eligibility under this criterion by virtue of his AMA Physician's Recognition Award. The record contains a copy of this award, which states that the petitioner "has fulfilled the requirements for the Physician's Recognition Award in Continuing Medical Education[,] Valid Jan 1 2003 – Jan 1 2006." On appeal, the petitioner contends that this award constitutes "recognition of [his] outstanding abilities and competence" by "a recognized national association, internationally renowned." Again, the recognition and renown of the AMA as an organization does not apply to every certificate it issues. The record contains no

evidence of the requirements referenced in the certificate or other documentation that this award recognizes excellence in psychiatry, rather than mere completion of “Continuing Medical Education.”

Finally, the petitioner claims eligibility under this criterion because he was certified to provide psychiatric assessments to courts in the United Kingdom. The record contains a letter from ██████████ Chair of the London Region Approval Panel, and dated February 1, 2001. ██████████ informs the petitioner of his approval under “Section 12 of the Mental Health Act 1983” and explains that it “enables [him] to make recommendations under Part II of the Act and give guidance to courts in England and Wales as a medical practitioner under Part III.” The record contains no evidence that this approval constitutes a nationally or internationally recognized prize or award, rather than a professional certification in the petitioner’s field. Accordingly, the petitioner does not meet this criterion.

(ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted evidence of his membership in the American Psychiatric Association (APA), the American Academy of Psychiatry and the Law (AAPL), and the American Association for Geriatric Psychiatry (AAGP). The record contains no documentation of the eligibility or membership criteria of these associations or other evidence that outstanding achievements are prerequisite to APA, AAPL, or AAGP membership. Consequently, the petitioner’s APA, AAPL and AAGP memberships do not satisfy this criterion.

On appeal, the petitioner claims that he meets this criterion by virtue of his certification in three specialties by the American Board of Psychiatry and Neurology (“the Board”). He states that the Board “is a national body of international acclaim which applies stringent selection criteria to applicants for diplomate status in oral and written examinations with an attendant high failure rate.” The record contains no evidence to corroborate this claim. The record includes copies of certificates evidencing the petitioner’s Board certification in the specialty of psychiatry and the subspecialties of forensic psychiatry and geriatric psychiatry, but the petitioner submitted no documentation of the Board’s certification criteria or the passage rate of its certification examinations in these three areas. Moreover, Board certification – even if difficult to attain – is a professional qualification and credential. The record contains no evidence that such certification constitutes a nationally or internationally recognized prize or award in the petitioner’s field. In addition, as explained above under the first criterion, the national or international acclaim of an organization cannot be ascribed to every certification it issues. Accordingly, the petitioner does not meet this criterion.

(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The record contains website printouts, a press release, pamphlet, and newsletters of the SUNY Downstate Medical Center and the Kings County Hospital Center. Although the petitioner did not submit these materials as evidence of his eligibility under this criterion, the director nonetheless noted that none of the materials mentioned the petitioner or his work. On appeal, the petitioner contends that such materials evidence the international acclaim and preeminence of these two institutions which “constitute a *condicio sine qua non*” for his acceptance and appointment to the institutions. This evidence and the petitioner’s contention are more

relevant to and will be discussed below under the fifth criterion. The record contains no evidence of published material about the petitioner and he consequently does not meet this criterion.

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The record shows that at the time of filing the petitioner was a Clinical Assistant Professor in Psychiatry at the SUNY Downstate Medical Center. While that position may require the petitioner's judgment of medical students, it alone does not satisfy this criterion. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that he has judged of the work of other individuals in his field in a manner significantly outside the general duties of his position and reflective of national or international acclaim. Accordingly, the petitioner does not meet this criterion.

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

On appeal, the petitioner claims that the director

appears to assume that scientific research and related publications take place ex vacuo, rather than as a combined effort and with the support of multiple faculty members in outstanding research and academic institutions. . . . It is rather the preeminent academic stature and the achievements of the appellant which constitute a condicio sine qua non for acceptance and appointment to internationally acclaimed academic and research faculties and institutions in the first place. The appellant is therefore entitled to claim contributions of major significance in his field based on the preeminence of the academic and research institution of which he has been a member and their [sic] original scientific, scholarly and other publications.

We do not dispute that scientific accomplishments are often the result of collaborative efforts of many researchers. However, it does not follow that scientific achievements conducted at an institution can be attributed to every scientist employed by that institution. To meet this criterion, an alien must present evidence that he or she has individually made contributions or was directly and substantially involved in collaborative contributions of major significance to his or her field. An alien will not demonstrate eligibility under this criterion through mere association with a reputable and distinguished institution.

As evidence under this category, the petitioner submitted 14 letters written by 13 individuals with whom he has worked. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim.

██████████ Chief of Service-Psychiatry at the Kings County Hospital Center where the petitioner was employed at the time of filing, states that the petitioner "has many varied interests and is knowledgeable

in many areas which have proven a substantial asset for Kings County Hospital Center, including interest and knowledge of foreign cultures and languages.” [REDACTED] explains that the petitioner “demonstrated his extraordinary ability during his fellowship in forensic psychiatry for July 01, 1998, through June 30, 1999. He won the universal praise of his colleagues and supervisors during his training for his outstanding performance clinically and academically in teaching and research. . . . [He] has a proven record of important contributions to the care of those with difficulties obtaining medical services, those who are uninsured, underinsured or otherwise at the fringes of society.” Although [REDACTED] praises the petitioner’s “extraordinary abilities” and his work at Kings County Hospital, [REDACTED] specifies no original contributions that the petitioner has made to his field at large.

[REDACTED] Clinical Associate Professor of SUNY Downstate Medical School and Director of Forensic Psychiatry at Kings County Medical Center, affirms that the petitioner was “an attending Forensic Psychiatrist” for the Forensic Psychiatry Service of Kings County Hospital where he was responsible for one of two treatment teams for mentally ill men facing criminal charges and for providing court ordered psychiatric assessments. [REDACTED] states that the petitioner “proved himself exceptionally skilled, reliable and ethical in performing his duties as a Forensic Psychiatrist and invaluable in enabling our service to meet expectations dictated by the courts, the New York State Department of Mental Hygiene and The Joint Commission on the Accreditation of Health Care Organizations. By both training and experience as well as credentials, [he] is uniquely and exceptionally qualified to perform his various duties.” [REDACTED] also notes that the petitioner is a mult-linguist who “readily communicates in several European languages as well as Chinese, to the advantage of our multicultural patient population.” Although he clearly values the petitioner’s contributions to his department, [REDACTED] does not identify any original scientific contributions of major significance that the petitioner has made to the field of forensic psychiatry.

In a letter dated May 28, 1999, [REDACTED] Director of the Valley Lodge Transitional Shelter in New York City, explains that the petitioner worked at the shelter “through a program funded by the Project for Psychiatric Outreach to the Homeless, Inc. since 1997.” [REDACTED] states that the petitioner “is an extraordinary example of the kind of psychiatrist that is needed in community psychiatry. He has been responsible for saving the lives of a number of Valley Lodge residents and graduates.” A June 23, 1999 letter from [REDACTED] Director of the Sanctuary for Families [REDACTED] House, states that the petitioner has done similar work for her institution which provides transitional housing to victims of domestic violence. [REDACTED] explains that the petitioner “displayed a unique ability to engage victims of domestic violence even though he never trained to work with this population. He has been instrumental in assisting our residents to accept therapy to deal with stress and anxiety in their lives.” While these two letters document the petitioner’s valuable and commendable work for Valley Lodge and the Sarah Burke House, they do not describe any major scientific contributions that the petitioner has made to the field of psychiatry in general, or within the specific areas of psychiatric treatment for homeless individuals or survivors of domestic violence.

A May 10, 1999 letter from [REDACTED] of the Mount Sinai School of Medicine states that [REDACTED] knew the petitioner “for five years as his training director” when the petitioner was a psychiatric resident. [REDACTED] states that the petitioner “was an outstanding Resident in Psychiatry and Geriatric Psychiatry. His medical acumen is excellent. He is a mature and capable physician. He is particularly diligent and organized. His relationship with others is highly professional and appropriate. He gets along very well with other staff.” This letter affirms the petitioner’s outstanding performance as a resident but contains no information relevant to this criterion.

██████████ Director of Inpatient Psychiatry at the Bronx Veterans Affairs Medical Center (VAMC) and Associate Professor of Psychiatry at the Mount Sinai School of Medicine, in a letter dated May 7, 1999, also praises the petitioner's abilities as exhibited during his work as "Chief Resident on the acute care in-patient ward at the Bronx Veterans Affairs Medical Center" for four months in 1996 and four months in 1997. ██████████ describes the petitioner as "an exceptionally reliable and responsible physician" and an "excellent diagnostician and psychopharmacologist." ██████████ affirms that the petitioner is "the most outstanding Chief Resident" that he has worked with, but describes no major contributions that the petitioner has made to his field. ██████████ Director of Geriatric Psychiatry at the Bronx VAMC and Assistant Professor of Psychiatry at the Mount Sinai School of Medicine, and ██████████ Chief of Psychiatry at the Bronx VAMC and Professor of Psychiatry and Pharmacology at the Mount Sinai School of Medicine, similarly praise the petitioner as a former fellow in the geriatric psychiatry program, but describe no major contributions that the petitioner has made to his field.

The record also contains three other letters dated in May 1999. Two are from the petitioner's fellow residents at Mount Sinai, ██████████ and ██████████. The third letter is from Dr. ██████████ Clinical Assistant Professor in the Department of Psychiatry and Behavioral Medicine at the University of South Florida. The letters state the authors' high opinion of the petitioner's knowledge, ethics and skills, but do not identify any major contributions that he has made to his field.

██████████ Chief of the Department of Psychiatry and Psychotherapy at Klinikum Nuernberg in Germany, states that the petitioner worked in his department as a "staff psychiatrist in the period from July 12, 1999, through October 31, 2000." ██████████ describes the petitioner as "a very dynamic and highly motivated physician who always and invariably discharged his duties to my fullest satisfaction." Similarly, ██████████ Locum Consultant Psychiatrist for West Sussex County Council Social Services in the United Kingdom, states that he worked with the petitioner at Goodmayes Hospital in Elford, Essex in 2001 and opines that he "has extraordinary abilities in his profession and is a highly gifted physician . . . [who] has always competently and capably represented the interests and concerns of his patients, many of whom belonged to an impoverished and needy strata of society." Neither ██████████ describe any achievements of the petitioner that have made major contributions to his field.

Finally, the petitioner submitted on appeal a letter from Cliff Sharp, Associate Medical Director for NHS Borders Mental Health and Learning Disability Network in Melrose, United Kingdom. ██████████ states that the petitioner "has worked as a locum Consultant Psychiatrist for NHS Borders between 1st March, 2004 and 7th January, 2005." We cannot consider this letter because ██████████ p discusses work performed by the petitioner after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Combined with evidence of the petitioner's academic and professional credentials, the support letters discussed above demonstrate that the petitioner has made valuable contributions to the institutions where he has worked and is a highly skilled and knowledgeable psychiatrist who is well regarded by his colleagues. The record does not establish, however, that the petitioner's accomplishments have been recognized in his field as original scientific contributions of major significance. Consequently, he does not meet this criterion.

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

To meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. In this case, the petitioner initially claimed to meet this criterion through his work at the Valley Lodge Transitional Shelter, the Sarah Burke House and the Kings County Hospital Center.

As discussed above under the fifth criterion, the letters of [REDACTED] indicate that the petitioner performed valuable and commendable services for the residents of Valley Lodge and the Sarah Burke House. Neither letter describes the petitioner's exact role at either establishment and the record suggests that his work was done on a consultant basis during his employment as a resident and fellow at the Mount Sinai Medical Center in New York. Even if the petitioner held a critical role at these institutions, the record is devoid of any independent evidence that either the Valley Lodge Transitional Shelter or the Sarah Burke House have distinguished reputations.

Doctors [REDACTED] of the Kings County Hospital Center affirm the importance of the petitioner's work and his outstanding skills and qualifications. [REDACTED] states, "[The petitioner] has made significant contributions to the Department of Psychiatry and Kings County Hospital Center and functions exceedingly well in a critical role as a provider of mental health services to an underserved population." Dr. O'Rourke explains that the petitioner provided "invaluable service through medical practice, teaching and research to patients, the hospital and the courts, the NYC Department of Corrections and the NYC Police Department. . . . When his current O-1 visa expires in 2004, I am certain there will be no one as highly qualified as [the petitioner] to fulfill his many functions."

While these letters may indicate the critical role that the petitioner held with the hospital's Forensic Service, the record does not demonstrate that the Forensic Service has a distinguished reputation. The submitted materials demonstrate that Kings County Hospital is a designated trauma center, is the largest municipal hospital in New York City, and treats all patients regardless of their ability to pay. However, most of the documents do not mention the Department of Psychiatry or its Forensic Service. The only materials that mention the hospital's psychiatric services are a printout from the website of the New York State Department of Health that lists the number of certified beds that the hospital has in psychiatry and a pamphlet entitled "Kings County Hospital Center Behavioral Health Care Network" which lists the various services available through the network. The record contains no evidence, for example, that the hospital's Department of Psychiatry is well regarded in its field or has received any prestigious commendations or that the Department's Forensic Service is highly regarded the field of forensic psychiatry.

On appeal, the petitioner contends that he was the only psychiatrist in the hospital's Forensic Service "with credentials in forensic psychiatry" and that he was one of only three members "of the combined faculties of Kings County Hospital and [SUNY] Downstate Medical Center to have qualifications and credentials in forensic psychiatry and diplomate status awarded by the American Board of Psychiatry and Neurology in that field." The record contains no evidence to corroborate this claim. Although the petitioner submitted evidence of his Board certification and other credentials, the record contains no evidence of how his qualifications compared to other psychiatrists employed by the hospital or the SUNY Downstate Medical Center. Dr. Dailey

and Dr. O'Rourke both note the petitioner's certifications and professional credentials, but they do not state that they were unique or essential to the role that the petitioner played at the hospital or the SUNY Downstate Medical Center. Accordingly, the petitioner does not meet this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The Form I-140 listed the petitioner's weekly wages as an attending psychiatrist and clinical assistant professor as \$2,160, but the petitioner submitted no corroborative documentation of his income or evidence that his salary was significantly higher than other psychiatrists in his field or comparable to psychiatrists at the very top of his field. On appeal, the petitioner states that he is now "the founder and sole beneficiary owner of Psychiatric Consultancy International, Limited, a company incorporated in Gibraltar, European Union. The revenue expected to be generated by the company is far in excess of salaries or remunerations in relation to others in the field." Yet a visa petition may not be approved based on speculation of future eligibility. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Moreover, the petitioner's company was established after his petition was filed and we consequently cannot consider any evidence of his resultant income. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. 45 at 49. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is an accomplished psychiatrist who has made valuable contributions to the institutions where he has worked. However, the record does not establish that the petitioner had achieved sustained national or international acclaim placing him at the very top of his field at the time of filing. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.